RECORD
AND
BRIEFS

No._____

In The Supreme Court of the United States

Adaucto Chavez-Meza, Petitioner,

v.

United States of America, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

When a district court decides not to grant a proportional sentence reduction under 18 U.S.C. § 3582(c)(2), must it provide some explanation for its decision when the reasons are not otherwise apparent from the record, as the United States Courts of Appeals for the Sixth, Eighth, Ninth, and Eleventh Circuits have held, or can it issue its decision without any explanation whatsoever so long as it is issued on a pre-printed form order containing boilerplate language providing that the court has "tak[en] into account the policy statement set forth at U.S.S.G. § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," as the Courts of Appeals for the Fourth, Fifth, and Tenth Circuits have held?

INTERESTED PARTIES

There are no parties to the proceeding other than those listed in the caption. The Petitioner is Adaucto Chavez-Meza, an inmate currently in the custody of the United States Bureau of Prisons. The Respondent is the United States of America.

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The opinion of the United States Court of Appeals for the Tenth Circuit, Pet. App. at 1a–13a, is available at 854 F.3d 655. The public portion of the district court's unpublished order on Petitioner's request for a sentence reduction is at Pet. App. 1b.[1]

JURISDICTIONAL STATEMENT

The Supreme Court has jurisdiction over this matter under 28 U.S.C. § 1254(1). Petitioner seeks review of an opinion and judgment of the United States Court of Appeals for the Tenth Circuit entered on April 14, 2017, affirming, on direct review, the district court's order modifying his sentence pursuant to 18 U.S.C. § 3582(c)(2). On July 10, 2017, Justice Sonya Sotomayor approved Petitioner's application for an extension of time within which to file a petition for a writ of certiorari, extending the time to and including August 14, 2017.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3582(c): "The court may not modify a term of imprisonment once it has been imposed except that . . . (2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C.

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[1] The second page of the order was filed under seal. As set forth in the opinion below, (Pet. App. at 9a-10a), that page simply indicates the recalculated guidelines range and does not contain any of the district court's reasoning.

§ 994(*o*), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

STATEMENT OF THE CASE

This case presents a clear and deep circuit split on the issue of whether a district court must provide any reasoning when it reduces a prisoner's sentence pursuant to an amendment to the Sentencing Guidelines made retroactive by the United States Sentencing Commission, when the new sentence is not proportional to where the prior sentence fell within the guidelines range. Siding with the minority on this issue, the Tenth Circuit held below that a district court need not provide any explanation so long as it checked the box on a form order stating that it had considered the appropriate factors. Petitioner Adaucto Chavez-Meza respectfully requests that the Court issue a writ of certiorari so that may resolve this issue—an issue that likely will present itself in scores of hundreds of cases in the future.

Mr. Chavez-Meza pleaded guilty without the benefit of a plea agreement to a two-count indictment charging him with Conspiracy and Possession with Intent to Distribute 500 Grams and More of a Mixture and Substance Containing a

Detectable Amount of Methamphetamine, in violation of 21 U.S.C. §§ 841(b)(1)(a) and 846. (Pet. App. at 3a.) The United States Probation & Parole Office ("Probation") attributed 1,658.3 grams (actual) of methamphetamine to Mr. Chavez-Meza. Under the Sentencing Guidelines in place at the time of his original sentencing, Probation calculated Mr. Chavez-Meza's base offense level as 38. Mr. Chavez-Meza received a 2-point reduction pursuant to the "safety valve" provision found at U.S.S.G. § 2D1.1(b)(16) and a 3-point reduction for acceptance of responsibility pursuant to U.S.S.G. §§ 3E1.1(a) & (b), for a total offense level of 33. With no criminal history points, Mr. Chavez-Meza's criminal history category was I. This resulted in a guidelines sentencing range of 135 to 168 months. (*See* Pet. App. at 3a.)

At Mr. Chavez-Meza's original sentencing hearing, the district court explained that "the reason the guideline sentence is high in this case . . . is because of the quantity" of methamphetamine (*Id.* (internal quotation marks omitted).) The district court sentenced Mr. Chavez-Meza at the low-end of the Guidelines, i.e., to a term of imprisonment of 135 months. (*Id.*)

In 2015, Mr. Chavez-Meza moved the district court under 18 U.S.C. § 3582(c)(2) to reduce his sentence pursuant to Amendment 782 to the Sentencing Guidelines, which reduced the applicable guidelines ranges for certain drug offenses. (Pet. App. 3a.) The district court appointed undersigned counsel to

represent Mr. Chavez-Meza (pursuant to the Criminal Justice Act). (*Id.*) On July 17, 2015, Probation submitted a memorandum in which it determined that, under Amendment 782, Mr. Chavez-Meza's new guidelines range was 108 to 135 months. The memorandum noted that Mr. Chavez-Meza had "completed education courses related to masonry, construction, and healthy lifestyle," was "currently enrolled in GED courses twice weekly," and was "trying to enroll in a non-residential drug treatment program." Probation also noted that Mr. Chavez-Meza had received one disciplinary sanction for using another inmate's phone number.

On August 10, 2015, Mr. Chavez-Meza and the government filed a stipulation in which they agreed that Amendment 782 resulted in a lower sentencing range for Mr. Chavez-Meza. (Pet. App. at 3a.) Mr. Chavez-Meza requested a proportional reduction to the low end of his amended sentencing range, i.e., 108 months. (*Id.*) The government did not take a position on a specific sentence, but agreed that the one disciplinary action did not disqualify Mr. Chavez-Meza from receiving a sentence reduction.

On April 5, 2016, the district court entered an order on an "AO-247" form, reducing Mr. Chavez-Meza's sentence to 114 months. (Pet. App. at 1b.) The district court did not provide any reasons or explanation for its decision to reduce Mr. Chavez-Meza's sentence only to 114 months, and not to 108 months as

requested by Mr. Chavez-Meza. The form order simply contained the following boilerplate language:

> [H]aving considered [the defendant's] motion, and taking into account the policy statement set forth at USSG § 1B1.10 and the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable,
>
> **IT IS ORDERED** that the motion is . . . GRANTED and the defendant's previously imposed sentence of imprisonment . . . of 135 months is **reduced to** 114 months.

(*Id.*)

Mr. Chavez-Meza timely appealed the district court's order to the U.S. Court of Appeals for the Tenth Circuit. (Pet. App. at 2a.) That court's appellate jurisdiction arose under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a). The sole issue Mr. Chavez-Meza raised on appeal was whether the district court erred in failing to provide any reasons for its decision to reduce Mr. Chavez-Meza's sentence to 114 months, instead of the requested 108 months. (*See* Pet. App. at 2a.)

On April 14, 2017, the Tenth Circuit issued an opinion affirming the district court. (*Id.* at 1a.) The Tenth Circuit ruled that the "explanatory requirement" contained within 18 U.S.C. § 3553(c) does not apply to sentence modification proceedings under § 3582(c)(2). (Pet. App. at 5a–6a.) The Tenth Circuit further ruled that any need for explanation under § 3582(c)(2) cannot be any greater than the need for explanation under § 3553(c). (Pet. App. at 6a–7a.) Because § 3553(c) "do[es] not require extensive explanations for sentences within the guidelines

range," (Pet. App. at 7a), the Tenth Circuit held that, "absent any indication the court failed to consider the § 3553(a) factors, a district court completing form AO-247 need not explain choosing a particular guidelines-range sentence." (Pet. App. at 8a–9a.)

The Tenth Circuit recognized that "[t]he circuits are split on the degree of explanation necessary to satisfy § 3582[,]" and acknowledged that its decision conflicted with those of multiple other circuits. (Pet. App. at 10a.) Nonetheless, while stating that it "might be a good practice for the district courts" to explain the reasons for their decisions in sentence modification decisions, and that "reviewing courts might benefit in some circumstances from additional explanation," it held that they are not required to provide any such explanation. (*Id.* at 13a.)

REASONS FOR GRANTING THE PETITION

I. The Courts of Appeals Are Divided over Whether District Courts Must Explain Their Decisions When Non-Proportionally Reducing a Sentence Pursuant to § 3582(c)(2).

As the Tenth Circuit recognized, circuit courts are split over whether district courts must explain their decisions when ruling on motions under § 3582(c)(2). (Pet. App. at 10a ("[T]he circuits are split on the degree of explanation necessary to satisfy § 3582.").) Where a district court reduces a sentence by a non-proportional amount, the, Sixth, Eighth, Ninth, and Eleventh Circuits hold that

district courts must provide some explanation of their decisions. The Fourth, Fifth, and Tenth Circuits hold that no such explanation is necessary.[2]

A. The, Sixth, Eighth, Ninth, and Eleventh Circuits Require Sufficient Explanation to Enable Appellate Review.

Contrary to the decision below, the Sixth, Eighth, and Eleventh Circuits have held in published decisions that, in order to enable appellate review, district courts must provide some explanation when they grant a § 3582(c)(2) motion, but decline to grant a fully-proportional sentence reduction. In *United States v. Howard,* 644 F.3d 455 (6th Cir. 2011), the defendant initially was sentenced to a bottom of the guidelines sentencing range of 97 months. *Id.* at 457. After the crack cocaine amendments to the Guidelines, the defendant's new sentence range was 78 to 97 months. *Id.* The district court, upon the defendant's § 3582(c)(2) motion,

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[2] The First and Third Circuits have addressed related questions but not the precise issue presented here. The First Circuit has held that where the reasons for granting a non-proportional sentence reduction are apparent from the record, no further explanation is necessary. *United States v. Zayas-Ortiz*, 808 F.3d 520 (1st Cir. 2015) ("[T]he record as a whole is sufficient for us to infer the pertinent factors taken into account by the court below."). Similarly, the Third Circuit has held that no additional explanation is necessary where the § 3582(c)(2) motion is granted and the sentence is decreased proportionally to the original sentence. *United States v. Patton*, 644 F. App'x 125, 127 (3d Cir. 2016) ("Given the limited nature of § 3582(c)(2) relief and the fact that the District Court reduced Patton's sentence proportionally, we discern no error by the District Court in failing to issue an opinion concerning Patton's modified sentence."). Mr. Chavez-Meza's petition is limited to the question of whether district courts must provide explanations when the reasons for the decision are not apparent from the record and the sentence is not reduced in a proportional manner. The First and Third circuits do not answer that precise question.

resentenced the defendant to a term of 88 months. *Id.* As in the case below, the district court merely checked a box on a form order noting that it took "into account the sentencing factors set forth in 18 U.S.C. § 3553(a), to the extent they are applicable." *Id.* at 461 (internal quotation marks omitted). The Sixth Circuit reversed because the district court "neither stated which of the § 3553(a) factors were applicable nor added any explanation for its decision in the space provided for 'additional comments.'" *Id.*

Likewise, in *United States v. Burrell*, 622 F.3d 961 (8th Cir. 2010), the Eight Circuit reversed a district court's § 3582(c)(2) sentence reduction order where the amended sentence (151 months) was at the top of the amended guidelines range (121–151 months), the defendant's original sentence (168 months) was in the middle of the guidelines range (151–188 months), and the district court did not provide any reasoning in its order. *See id.* at 962–63. The Eight Circuit did so because "the record [did] not allow [it] to discern how the district court exercised its discretion." *Id.* at 964. The same occurred in *United States v. Williams*, 557 F.3d 1254 (11th Cir. 2009), where the district court imposed an amended sentence at the high end of the Guidelines even though the defendant's original sentence was near the low end of the Guidelines. *See id* at 1255. The Eleventh Circuit reversed because the district court failed to provide any reasoning in its summary order. *Id.* at 1257.

The Ninth Circuit has gone further than other circuits in the degree of explanation required in § 3582(c)(2) proceedings. In *United States v. Trujillo*, 713 F.3d 1003 (9th Cir. 2013), the Ninth Circuit reversed a district court's order denying a sentence reduction because the district court failed to explain its reasons for rejecting all of the defendant's non-frivolous arguments in support of the sentence reduction. *Id.* at 1011. Although *Trujillo* involved a straight denial of a § 3582(c)(2) motion, it has since extended its broad rule to situations where, as here, the district court imposes a non-proportionally reduced sentence. *See United States v. Gallegos-Raymundo*, --- F. App'x ---, 2017 WL 2198159 (9th Cir. May 18, 2017). The Ninth Circuit's rule, however, is predicated on this Court's holding in *Rita v. United States*, 551 U.S. 338 (2007), regarding what district courts are obliged to do at original sentencings. *See Trujillo*, 713 F.3d at 1009-11. Because this Court has emphasize that § 3582(c)(2) proceedings are limited in scope and not full resentencing proceedings, *Dillon v. United States*, 560 U.S. 817, 827-28 (2010), Mr. Chavez-Meza does not seeking a rule as broad as that set forth by the Ninth Circuit.[3]

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[3] The Second and the Seventh Circuits do not appear to have addressed the precise question presented here, i.e, whether district courts are obligated to provide some explanation when partially denying sentence reduction motions. Both circuits, however, have held in published decisions that when denying § 3582(c)(2) motions district courts must provide sufficient explanation so as to enable appellate review. *See United States v. Christie*, 736 F.3d 191, 196 (2nd Cir. 2013) (holding that reversal is required when "the reasons for the district court's exercise of

B. The Tenth Circuit Joined the Fourth and Fifth Circuits in Not Requiring District Courts to Provide Any Explanation When Reducing a Sentence Non-Proportionally Pursuant to § 3582(c)(2).

In ruling that the district court below did not err when it failed to provide any explanation for its decision, the Tenth Circuit joined the Fourth and Fifth Circuits. In *United States v. Smalls*, 720 F.3d 193 (4th Cir. 2013), the Fourth Circuit considered an appeal of an order imposing a proportional sentence reduction pursuant to § 3582(c)(2).The district court had issued its decision on a form order, merely stating: "In granting this motion, the court has considered the factors set forth in 18 U.S.C. § 3553(a)." *Id.* at 195. Contrary to the defendant's argument that it was necessary for the district court to provide individualized reasoning, the Fourth Circuit held that no explanation was required absent any evidence the district court "neglected to consider relevant factors." *Id.* at 196. Although *Smalls* involved a proportional sentence reduction, the Fourth Circuit has summarily applied that decision to cases in which the defendants failed to receive

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discretion are not apparent from the record"); *United States v. Marion*, 590 F.3d 475, 478 (7th Cir. 2009) (reversing because boilerplate language on AO-247 form showed "only that the district court exercised its discretion rather than showing *how* it exercised its discretion"). This reasoning supports the rule of the Sixth, Eighth, Ninth, and Eleventh Circuits and it is likely that the Second and Seventh Circuits would follow in their footsteps when presented with the precise question set forth in this petition. *Cf. United States v. Brodsky*, 675 F. App'x 59, 62-63 (2d Cir. 2017) (affirming non-proportional sentence reduction where district "court explained that its decision was based on the dangerousness of Williams's criminal conduct, his lack of remorse at sentencing, and his significant risk of re-offending").

proportional sentence reductions. *See, e.g.*, *United States v. Locklair*, 668 F. App'x 477, 477–78 (4th Cir. 2016) (mem.) (affirming district court's order reducing sentence by twelve months instead of proportional reduction of forty one months); *United States v. Johnson*, 641 F. App'x 280, 281 (4th Cir. 2016) (mem.) (affirming district court's order reducing sentence by six months instead of proportional reduction of fourteen months).

Like the Fourth Circuit in *Smalls*, the Fifth Circuit has also imposed a blanket rule allowing district courts to exercise unreviewable discretion when imposing a non-proportional sentence reduction pursuant to § 3582(c)(2). In *United States v. Washington*, 375 F. App'x 390 (5th Cir. 2010), the defendant "argue[d] that the district court abused its discretion in failing to sentence him towards the lower end of the guidelines range, as it did at his original sentencing." *Id.* at 390. Relying on *United States v. Evans*, 587 F.3d 667 (5th Cir. 2009),[4] the Fifth Circuit held that, because "[t]he district court was under no obligation to reduce the sentence at all, . . . it had no obligation to impose any particular sentence within the recalculated guidelines range." *Washington*, 375 F App'x at 390. Simply because the district court reduced the defendant's sentence, the Fifth

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[4] In *Evans*, the Fifth Circuit relied on the earlier case of *United States v. Cox*, 317 F. App'x 401 (5th Cir. 2009), when stating: "If a defendant cannot successfully challenge a district court for failing to provide reasons for *denying* his motion to reduce his sentence, it is axiomatic that he cannot do so for *granting* his motion but not providing a satisfactorily low enough sentence within the recalculated range." *Evans*, 587 F.3d at 674.

Circuit assumed the district court appropriately considered the § 3553(a) factors. *Id.*

In holding that the district court below made no error when it neglected to provide any reasons when it reduced Mr. Chavez-Meza's sentence to 114 months, instead of to 108 months—which would have been proportional to his original sentence—the Tenth Circuit aligned itself with the Fourth and Fifth Circuits. The decision below, thus, further deepened a circuit split requiring this Court's resolution.

II. The Question Presented is Important and Recurring.

Although it is fair to say that the vast majority of sentence reductions pursuant to Amendment 782 have been finalized, the ongoing circuit split is important because it undoubtedly will reoccur in thousands of cases in the future. One of the United States Sentencing Commission's basic objectives is to assure that the Sentencing Guidelines adequately meet the purposes of sentencing as set forth in § 3553(a). *Rita*, 551 U.S. at 347. The Commission's work is ongoing, and it regularly refines and updates the Guidelines, basing its amendments on its study of thousands of sentences imposed yearly, as well as advice from "prosecutors, defenders, law enforcement groups, civil liberties associations, experts in penology, and others." *Id.* at 350; *see also* 28 U.S.C. § 994(*o*).

18 U.S.C. § 3582(c)(2) furthers Congress's goals of uniformity and proportionality in sentencing by enabling individuals already sentenced to request modifications based on amendments that the Commission chooses to make retroactive. *See generally* U.S.S.G. § 1B1.10. Between 2008 and 2016, the federal courts have conducted over 50,000 resentencing proceedings based on retroactive guidelines amendments under 18 U.S.C. § 3582(c)(2)—far more than any other type of sentencing-modification proceeding.[5]

As the Sentencing Commission continues to refine and amend the Guidelines, it undoubtedly will make additional amendments retroactive, resulting

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[5] United States Sentencing Commission, Annual Report and Sourcebook of Federal Sentencing Statistics (2008–2016), *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2016/Table62.pdf (2016); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2015/Table62.pdf (2015); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2014/Table62.pdf (2014); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2013/Table62.pdf (2013); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2012/Table62_0.pdf (2012); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2011/Table62_0.pdf (2011); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2010/Table62_0.pdf (2010); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2009/Table62_0.pdf (2009); https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2008/Table62_0.pdf (2008).

in thousands of future sentence modifications pursuant to § 3582(c)(2).[6] These types of sentence-modification proceedings are "limited" in nature. *Dillon*, 560 U.S. at 828. Nevertheless, given their sheer number, the issues presented in this petition are likely to recur with significant frequency. In order to enable effective, uniform appellate review of these proceedings, it is necessary for this Court to provide clear guidance to lower courts.

III. This Case Presents an Ideal Vehicle for Addressing the Question Presented.

This case presents a clean vehicle to resolve the narrow question presented. The precise issue raised in this petition is whether, in a § 3582(c)(2) proceeding, a district court must provide some explanation for its decision to impose a non-proportional sentence where the record does not otherwise indicate the reason for the district court's decision, so as to enable effective appellate review.

This was the sole issue Mr. Chavez-Meza raised on appeal, and the Tenth Circuit's decision effectively forecloses appellate review of sentence reduction proceedings so long as the district court checks a box on a form order indicating that it considered the § 3553(a) factors. The district court had initially sentenced Mr. Chavez-Meza to a bottom-of-the-guidelines sentence of 135 months. The district court rejected Mr. Chavez-Meza's request for a proportionally reduced

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[6] Since promulgation of the Sentencing Guidelines, the Sentencing Commission has made nearly thirty amendments retroactive. *See* U.S.S.G. § 1B1.10(d).

sentence of 108 months. Instead, without providing any explanation, the district court reduced Mr. Chavez-Meza's sentence only to 114 months. The district court's decision was not apparent from the record. Probation prepared a memorandum discussing Mr. Chavez-Meza's positive achievements in prison and disclosing one disciplinary infraction for using another inmate's telephone number. The government, however, did not provide any recommendation to the district court, or argue for or against any specific sentence. The impact of this post-sentence behavior on Mr. Chavez-Meza's modified sentence, if any, was, thus, not obvious. *See, e.g.*, *Zayas-Ortiz*, 808 F.3d at 524 (1st Cir. 2015) (holding that "the record as a whole is sufficient for us to infer the pertinent factors taken into account" because the government made specific arguments about public safety concerns and the defendant's specific conduct, and the government's recommendation was echoed by Probation).

Finally, this issue has now been addressed by a majority of the circuits and the resulting circuit split is mature. The circuits fall into two distinct camps. One group of circuits requires district courts to provide sufficient information about their choice of sentence to enable effective appellate review. The other has declined to require the district court to provide any sort of explanation absent an indication that the district court failed to consider the appropriate factors. The remaining circuits are unlikely to provide additional insight into the question.

IV. The Ruling Below Is Incorrect Because It Shields Sentence Reduction Rulings from Appellate Review.

This Court has held, in multiple contexts, that when Congress provides criteria to guide discretionary decisions, the courts making those decisions must provide adequate explanation in order to enable effective appellate review. For example, in *United States v. Taylor*, 487 U.S. 326 (1988), this Court held that a district court abused its discretion in dismissing an indictment with prejudice where it failed to analyze adequately the issue within the confines of the Speedy Trial Act. *Id.* at 342-43. As held by the Court, "[w]here . . . Congress has declared that a decision will be governed by consideration of particular factors, a district court must carefully consider those factors as applied to the particular case and, whatever its decision, clearly articulate their effect in order to permit meaningful appellate review." *Id.* at 336-37. Indeed, "a decision calling for the exercise of judicial discretion 'hardly means that it is unfettered by meaningful standards or shielded from thorough appellate review.'" *Id.* at 336 (quoting *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 416 (1975)). Similarly, the Court in *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), reversed the Eleventh Circuit's affirmance of a district court's discretionary award of attorneys' fees pursuant to 42 U.S.C. § 1988. *Perdue*, 559 U.S. at 559. It did so because the district court did not provide proper justification for the award. *See id.* at 557. While recognizing that a fee award is committed to a trial judge's sound discretion, the Court held that "the

judge's discretion is not unlimited. It is essential that the judge provide a reasonably specific explanation for all aspects of a fee determination . . . . Unless such an explanation is given, adequate appellate review is not feasible . . . ." *Id.* at 558; *see also, e.g., Gall v. United States*, 552 U.S. 38, 68 (2007) (Alito, J., dissenting) ("Appellate review for abuse of discretion is not an empty formality.").

Section 3582(c)(2) requires district courts to consider the § 3553(a) factors when deciding whether to reduce a sentence pursuant to an amendment that the Sentencing Commission has made retroactive. And, while § 3582(c), unlike § 3553(c), does not expressly provide that the district court must state its reasons for imposing a particular sentence, neither do the statutes at issue in *Taylor* or *Perdue* impose a "duty of explanation." (Pet. App. at 6a); *see* 18 U.S.C. § 3162(a); 42 U.S.C. § 1988(b). Instead, it is well understood that these types of decisions are reviewed for abuse of discretion. *See Perdue*, 559 U.S. at 563 ("[T]he function of appellate courts is to review [§ 1988 fee awards] for an abuse of . . . discretion."); *Taylor*, 487 U.S. at 335 ("Consistent with the prevailing view, the Court of Appeals stated that it would review the dismissal with prejudice under an abuse-of-discretion standard.") (citing cases); *see also Burrell*, 622 F.3d at 964 ("We review a district court's decision under § 3582(c)(2) to reduce a sentence and the extent of any reduction for an abuse of discretion."). Thus, contrary to the Tenth Circuit's assertion that the need for some explanation when deciding to impose a non-

proportional sentence reduction pursuant to § 3582(c)(2) stemmed from § 3553(c), such a requirement is inherently present whenever district courts exercise their discretion within bounds set by Congress.

District courts follow a two-step process when acting on § 3582(c)(2) sentence modification motions. First, they determine whether the defendant is legally eligible for a sentence modification under U.S.S.G. § 1B1.10. If so, the district court then weighs the § 3553(a) factors and determines whether a sentence reduction is warranted. *Dillon*, 560 U.S. at 826–27.

At the second step of the process (which is the step at issue in this case), Congress has constrained the district court's discretion by requiring it to consider the § 3553(a) factors. In addition, § 3582(a) constrains the district court's discretion by precluding it from imposing a prison term in order to promote the defendant's rehabilitation. *See Tapia v. United States*, 564 U.S. 319, 332 (2011). The Sentencing Guidelines, which are still binding on district courts in § 3582(c)(2) proceedings, *see Dillon*, 560 U.S. at 829–30, provide yet another constraint by directing the district court not to consider race, sex, national origin, creed, religion, or socio-economic status in determining the sentence. *See* U.S.S.G. § 5H1.10.

The Tenth Circuit's rule, along with that of the Fourth and the Fifth Circuits, makes it impossible for an appellate court to determine whether the district court

properly exercised its discretion within the bounds prescribed by Congress. Appellate courts "ordinarily will not be able to determine whether the district court's exercise of discretion was reasonable without an indication of the reason the discretion was exercised as it was." *Christie,* 736 F.3d at 196. A district court simply checking the box next to the boilerplate language contained within the AO-247 form fails to provide any sort of basis for appellate review. While the boilerplate language may show "that the district court exercised its discretion, it does not show *how* it exercised that discretion." *Marion*, 590 F.3d at 477–78. It does not show which factors the district court found applicable, and it provides no help in assuring that the district court avoided taking into consideration impermissible factors.

The Sixth, Eighth, and Eleventh Circuits, by contrast, sensibly require basic explanations from district courts to enable appellate review, consistent with the bedrock principles articulated in *Taylor* and *Perdue*. The explanation these circuits call for is reasonably tailored to the need. *See, e.g., Howard*, 644 F.3d at 460. They simply require sufficient explanation so that appellate courts can determine if the district court properly exercised its discretion. *See Burrell*, 622 F.3d at 964. This requirement is essential to ensuring that district courts in § 3582(c)(2) proceedings district courts exercise their discretion within the bounds set by Congress.

CONCLUSION

For the foregoing reasons, Petitioner Adaucto Chavez-Meza respectfully requests that the Court grant a writ of certiorari to the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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No._____

In The Supreme Court of the United States

Adaucto Chavez-Meza, Petitioner,

v.

United States of America, Respondent.

CERTIFICATE OF SERVICE

I, Todd A. Coberly, an attorney appointed under the Criminal Justice Act of 1964, *see* 18 U.S.C. § 3006A, hereby certify pursuant to Sup. Ct. R. 29 that on this 14th day of August, 2017, a copy of the Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit were mail, postage-prepaid, to the Solicitor General of the United States, United States Department of Justice, 950 Pennsylvania Avenue, NW, Room 5614, Washington, DC 20530-0001, counsel for the Respondent.

Respectfully submitted,

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